

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARDY MERRITT,  
Plaintiff,  
v.

HOUSING AND URBAN  
DEVELOPMENT, CITY OF BERKELEY  
(Health, Housing and Human Services),  
SHELTERPLUS CARE DEPARTMENT  
AND PROGRAM, SB MANN 3 LLC  
Defendants.

Case No. 24-cv-03968-MMC

**ORDER DISMISSING AMENDED  
COMPLAINT WITHOUT FURTHER  
LEAVE TO AMEND; DIRECTIONS TO  
CLERK**

By order filed July 16, 2024 ("July 16 Order"), the Court granted plaintiff Ardy Merritt's ("Merritt") application to proceed in forma pauperis and, pursuant to 28 U.S.C. § 1915(e)(2), dismissed Merritt's complaint, for failure to state a claim; the Court afforded Merritt leave to amend. Now before the Court is Merritt's amended complaint, titled "Amended Breach of Contract[,], Fraudulent Enforcement of Contract" ("AC"), and an affidavit in support thereof, both filed July 26, 2024.

Where, as here, a party proceeds in forma pauperis, the district court, pursuant to 28 U.S.C. § 1915(e)(2), must "dismiss the case" if the plaintiff "fails to state a claim on which relief may be granted." See 28 U.S.C. § 1915(e)(2)(B). The Court thus turns to the question of whether the AC states a claim on which relief may be granted.

Merritt asserts claims of breach of contract and fraud and seeks, as against all defendants, monetary damages, as well as an injunction to stay proceedings in an unlawful detainer action filed in state court. As set forth in greater detail in the July 16 Order, Merritt's claims arise from his allegations that his landlord, SB Mann 3 LLC,

brought an unlawful detainer action against him after it assertedly had breached the terms of their rental agreement, and that the City of Berkeley ("Berkeley"), which provided a rental subsidy to Merritt under Berkeley's ShelterPlus Care Program, and the United States Department of Housing and Urban Development ("HUD"), which provided a grant to Berkeley to fund said Program, failed to take steps against SB Mann 3 LLC for its asserted breach of the rental agreement.

In its prior Order, the Court dismissed Merritt's claims against HUD, as asserted in the initial Complaint, for lack of subject matter jurisdiction, as Merritt did not allege he had presented an administrative claim to HUD prior to his filing the instant action. See 28 U.S.C. § 2675(a) (providing "action shall not be instituted against the United States for money damages . . . unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied"). In light of such dismissal, the Court also dismissed Merritt's claims against SB Mann 3 LLC and Berkeley, which claims arise under state law, also for lack of subject matter jurisdiction. See Scott v. Pasadena Unified Sch. Dist., 306 F.3d 646, 664 (9th Cir. 2002) (holding, where federal claims are dismissed for lack of subject matter jurisdiction, district court has "no discretion to retain supplemental jurisdiction over [plaintiff's] state law claims").

In the AC and supporting affidavit, Merritt provides additional details as to SB Mann 3 LLC's alleged breach of contract (see, e.g., AC at 5 (alleging SB Mann 3 LLC is "allowing . . . transient squatters to reside on property")), and the asserted failure by HUD and Berkeley to intervene on his behalf (see, e.g., AC Ex. 2 at 1 (letter from HUD to Merritt, stating HUD "field office" had "recommended [Merritt] comply with the terms of [his] lease" and "work with [Berkeley] on paying the arrearage"); Pl.'s Aff. 6 (alleging Berkeley employees in ShelterCare Plus engaged in "delay" that "prevented full disclosure of the safety and security violations [of SB Mann 3 LLC]")). As neither the AC nor the supporting affidavit, however, includes any allegation that Merritt submitted an administrative claim to HUD prior to filing the instant action, let alone an allegation that such claim had been denied, the Court lacks jurisdiction over the claims in the AC for the


1 same reasons as expressed in the July 16 Order.

2 Accordingly, the AC is hereby DISMISSED without further leave to amend, for lack  
3 of subject matter jurisdiction.

4 The Clerk of Court is hereby DIRECTED to close the file.

5 **IT IS SO ORDERED.**

6  
7 Dated: August 15, 2024

  
MAXINE M. CHESNEY  
United States District Judge

United States District Court  
Northern District of California